

Atty Dkt. No.: CLON-094
USSN: 10/806,930

REMARKS

In view of the following remarks, the Examiner is respectfully requested to withdraw the rejections and allow Claims 1-10, 17-18, and 20-30, the only claims pending and currently under examination in this application.

Formal Matters

Claims 1-10, 17-18, and 20-30 are pending after entry of the amendments set forth herein.

Claims 1-10 and 17-30 were examined. Claims 1-10 and 17-30 were rejected. No claims were allowed.

Claim 19 has been canceled.

Claims 1, 18, and 20 have been amended. Support for the amendment can be found in the specification at, for example, Figure 3, and page 12, lines 16-20.

As the above amendments introduce no new matter to the application, their entry is respectfully requested.

Withdrawal of Objections

The Applicants express gratitude in the Examiner's indication that objections not repeated from the previous Office Action have been withdrawn.

Rejection under 35 U.S.C. § 112, first paragraph (Enablement)

The Office Action has maintained the rejection of Claims 1-10 and 17-26 under 35 U.S.C. § 112, first paragraph, for allegedly failing to provide enablement for the claimed invention. In view of the remarks made below, this rejection may be withdrawn.

In the spirit of expediting prosecution, the claims have been amended to recite that "said nucleic acid has a sequence identity of at least about 95% with SEQ ID NO: 05". As such, the amendment provides the structure and function for the claimed nucleic acids.

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In view of the above and the amendments to the claims, the Applicants respectfully request that this rejection be withdrawn.

Rejection under 35 U.S.C. § 112, second paragraph

The Office Action has maintained the rejection of Claims 1-10 and 17-20 under 35 U.S.C. § 112, second paragraph for allegedly failing to particularly point out and distinctly claim the subject matter regarded as the invention.

In the spirit of expediting prosecution and without conceding to the correctness of the rejection, Claims 1 and 18 have been amended to remove the objectionable language.

In view of the amendments to the claims, the Applicants respectfully request that this rejection be withdrawn.

Rejection Under 35 U.S.C. § 102

The Office Action has rejected Claims 1-2, 6-10, 17-18 and 22-26 under 35 U.S.C. § 102(e) for allegedly being anticipated by Craig et al. (U.S. Patent No. 6,465,199). In view of the amendments to the claims, this rejection may be withdrawn.

As noted above, in the spirit of expediting prosecution and without conceding to the correctness of the rejection, the claims have been amended to remove the objectionable language and to recite that the claimed nucleic acid have "a sequence identity of at least 95% with SEQ ID NO:05".

In contrast, Craig et al. does not teach a nucleic acid having a sequence identity of at least 95% with SEQ ID NO:05. As such, the cited reference fails to teach each and every element as found in the claims. Therefore, the Applicants respectfully request that this rejection be withdrawn.

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Rejection Under 35 U.S.C. § 103

Claims 3-6 and 19-21

The Office Action has rejected Claims 3-6 and 19-21 under 35 U.S.C. § 103(a) for allegedly being unpatentable over Craig et al. in view of Fradkov et al., 2000 (FEBS Lett. 479:127-130 (2000)). In view of the amendments to the claims, this rejection may be withdrawn.

As noted above, the claims have been amended to remove the objectionable language and to recite that the claimed nucleic acid have "a sequence identity of at least 95% with SEQ ID NO:05".

Therefore, since the cited references fail to teach a nucleic acid having a sequence identity of at least 95% with SEQ ID NO:05, the combination of the cited references fail to teach each and every element found in the claims. As such, the Applicants respectfully request that this rejection be withdrawn.

Claims 27-30

The Office Action has rejected Claims 27-30 under 35 U.S.C. § 103(a) for allegedly being unpatentable over Craig et al. in view of Fradkov et al. and Guegler et al. (U.S. Patent No. 6,326,175). In view of the amendments to the claims, this rejection may be withdrawn.

As noted above, the claims have been amended to remove the objectionable language and to recite that the claimed nucleic acid have "a sequence identity of at least 95% with SEQ ID NO:05".

Therefore, since the cited references fail to teach a nucleic acid having a sequence identity of at least 95% with SEQ ID NO:05, the combination of the cited references fail to teach each and every element found in the claims. As such, the Applicants respectfully request that this rejection be withdrawn.

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CONCLUSION

In view of the above remarks, this application is considered to be in good and proper form for allowance and the Examiner is respectfully requested to pass this application to issuance.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815.

Respectfully submitted,
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